

FCC 17M-34

ORDER

Released: September 13, 2017

It is now appropriate that Maritime, Choctaw, and the Enforcement Bureau jointly prepare and submit a stipulation of fact (Stipulation) that fourteen (14) certain enumerated site-based facilities are now under control of Choctaw and are no longer an issue for resolution in this proceeding. Those site-based facilities shall be identified individually with sufficient detail in the Stipulation. Such stipulation procedure, which the above parties have agreed to, will significantly facilitate and support resolving this case most efficiently. The stipulation shall be

submitted no later than **12 P.M. on Friday, September 22, 2017.**

II.

The only remaining site-based facilities that are in dispute are Locations 3 and 13 of Station KAE889, which, at least until September 7, 2014, were being used by Evergreen School District (ESD) to “coordinate student transportation and safety, as well as Evergreen emergency communications with all schools and key personnel.” EB Ex. 47 at 3. During an August 28, 2017 conference call, the parties disagreed as to whether Maritime had a duty to ensure that ESD, the nominal leasee of the spectrum at these sites, was in fact using the spectrum, in order to prevent a finding that operation of those two sites had been permanently discontinued. The Presiding Judge reserved the question of whether further briefing on this issue was necessary until after he had received and reviewed the declaration submitted by Maritime and Choctaw clarifying the factual circumstances of Maritime’s lease with ESD. *See Order*, FCC 17M-32 (rel. Aug. 29, 2017).

On September 8, 2017, Choctaw and Maritime submitted the joint statement and declaration, representing, among other things, that “[n]either Choctaw nor Maritime has any direct knowledge of the exact date ESD stopped using the KAE889 spectrum.” *Id.* at 2. Therefore, whether Maritime had a duty as lessor to ensure that the leased spectrum was being used remains an open question requiring further briefing.

III.

An Enforcement Bureau brief shall be submitted by **4 P.M. on Wednesday, October 4, 2017.**

A brief in response by Maritime and Choctaw shall be submitted by **4 P.M. on Friday, October 13, 2017.**

The Presiding Judge may require further briefing or rule on the merits and scope of the duty.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹



Richard L. Sippel
Chief Administrative Law Judge

¹ Courtesy copies will be sent to all counsel by email upon issuance.